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2

3   UNITED STATES DISTRICT COURT

4   EASTERN DISTRICT OF NEW YORK

        --X

5   ATLANTIS INFORMATION TECHNOLOGY, GmbH,,

6   Plaintiff,

7   - against -   Docket No. 06-CV-3921

                                              (ADS-WDW)

8

        CA, INC.,

9

10   Defendant.

        --X

11

12   DEPOSITION OF JOHN DUECKMAN, taken by

13   Plaintiff, pursuant to Notice, at the offices of

14   Farrell Fritz, PC, 1320 Reckson Plaza, Uniondale,

15   New York, on Tuesday, July 29, 2008, commencing at

16   9:38 a.m., before Chandra D. Brown, a Registered

17   Professional Reporter and Notary Public within and

18   for the State of New York.

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1   J. Dueckman
2   software for development purposes only.
3   Because E/NAT was based on that, it restricted
4   or precluded our ability to demonstrate that.
5   Software AG says you can that environment, you
6   can have that software, but for development
7   purposes, because it competes with CA products.
8   BY MR. KING:
9   Q   So restrictions in your arrangement with
10 software AG, which owns NATURAL, would preclude you
11 from demo'ing it in a certain --
12   A   On CA machines.
13   MR. McENTEE: That was the restriction he
14 was referring to.
15   MR. KING: I understand.
16   Q   That's consistent with what you said
17 before.
18   That's because software would be licensed
19 for use on designated machines?
20   MR. McENTEE: No. It's for the purpose --
21 internal development purposes, not --
22   MR. KING: Let me get the witness'
23 testimony.
24   A   For development purposes.
25   Q   Instead of running it on a different -- on

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1   J. Dueckman
2   a different machine would be a purpose other than a
3   development purpose?
4   A   Correct.
5   MR. McENTEE: Well,it's not running on a
6   different machine. It's not a different
7   machine. It's a CA machine. You just can't
8   demonstrate it. That's the point.
9   Q   You can use the software solely for
10 purposes of development, but you can't demonstrate
11 it even if it's on a CA machine?
12   A   Correct. As I understand.
13   Q   Did E/NAT have the same restriction; do
14 you know?
15   A   E/NAT was based on the software AG
16 environment. So it carried with it the restriction.
17   MR. McENTEE: Do you know that for a fact.
18   THE WITNESS: That's it's based on the
19 software --
20   MR. McENTEE: No. No. No.
21   There's restrictions on whether it could
22 be demo'ed or not.
23   Q   I understood that you were saying that
24 E/NAT couldn't be shown without also running a copy
25 of NATURAL. So whatever --

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1   J. Dueckman
2   A   That is correct.
3   Q   However NATURAL was restricted a the
4   logistical, practical matter, restricted how you
5   could use E/NAT?
6   A   That is correct.
7   Q   You weren't saying you knew that E/NAT
8   actually had a contractual restriction that
9   prevented it from being run on those machines,
10 correct?
11   A   That is correct.
12   Q   Can you tell me in general terms what the
13 ENDEVOR program does?
14   A   ENDEVOR product is categorized as a
15 software-changing configuration management software.
16 The product allows a site to create processes,
17 controls around the development of software for the
18 main frame and then the promotion through what are
19 referred to as life cycle stages, ultimately running
20 into a production environment.
21   Q   The first part of your answer you said
22 that it's a changing configuration management
23 software that allows a site to do certain things.
24   What do you mean by "a site"?
25   A   My definition of a site would be typically

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1   J. Dueckman
2   a company. So an example would be I used to work at
3   a site called BC Tel. I used to work at a site
4   called Canadian Airlines or Canadian Pacific
5   Airlines.
6   Q   So you're not using site to mean
7   geographic location?
8   You could have, for example, a company
9   that has remote geographic locations. Would each of
10 those locations be a site within the meaning of your
11 definition?
12   A   My definition of a site in the context of
13 what I was just talking about was an instance of
14 that, but there would be nothing to preclude a
15 company from having multiple sites.
16   Q   Multiple geographic sites?
17   A   Typically, yes.
18   Q   Could you have multiple sites at one
19 geographic location within a company?
20   MR. McENTEE: I'm not sure if it's within
21 the 30(b)(6).
22   Are you asking his personal opinion or his
23 official position?
24   That's not a topic he's been designated
25 on.

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1   J. Dueckman
2   MR. KING: I'm asking what the word means.
3   MR. McENTEE: He's designated on specific
4   topics. Okay. If you're asking him just what
5   his personal understanding is, that's one
6   thing. If you're asking what CA's official
7   position is, that's another issue.
8   MR. KING: If I'm asking him a question
9   that you contend falls outside the 30(b)(6)
10   designation, then I understand that he has --
11   he is not -- you haven't designated him to
12   speak on CA's behalf on that issue. I'm asking
13   for his understanding.
14   MR. McENTEE: His personal understanding?
15   MR. KING: Yes.
16   MR. McENTEE: That's fine.
17   BY MR. KING:
18   **Q   Do you remember what the question is at**
19   **this point?**
20   A   Yes.
21   My definition is typically a geographic
22   site or -- sorry -- a geographic location is a site.
23   That's generally how I treat it.
24   **Q   Okay.**
25   **Once again, I'll ask you to indulge my**

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1   **J. Dueckman**
2   **ignorance about software. I'm going to try to**
3   **paraphrase what you said. You tell me if I'm**
4   **accurate.**
5   **ENDEVOR essentially helps track changes or**
6   **milestones or events in the software development**
7   **process and keeps track of those events.**
8   **Is that accurate?**
9   MR. McENTEE: Among other things.
10   A   Yes.
11   MR. KING: You got to let him answer
12   though. If you're going to assert an objection
13   it's okay. This sort of narrative objection is
14   a little bit obstructive.
15   MR. McENTEE: He gave you a long list of
16   things. You are narrowing it to one thing.
17   MR. KING: Then I think your appropriate
18   response is objection, but --
19   MR. McENTEE: We could be here all day
20   with that. I think that was appropriate.
21   MR. KING: Okay.
22   BY MR. KING:
23   **Q   Is that one of its key functions, what**
24   **I've just described?**
25   A   Yes.

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1   J. Dueckman
2   **Q   Okay.**
3   **Are there other key functions that I am**
4   **missing?**
5   A   Is it possible to get a readback of your
6   paraphrase?
7   **Q   Sure.**
8   **(Whereupon the requested question was read**
9   **back by the Court Reporter.)**
10   **Q   I believe you testified that, yes, that's**
11   **accurate. Is there another primary general function**
12   **of ENDEVOR that I'm missing in that description.**
13   **I'm just trying to understand what the product does?**
14   A   At a very high level definition, that is
15   accurate in terms of encompassing.
16   **Q   Okay.**
17   **That's squares with my understanding of a**
18   **change manager.**
19   **Is there a difference between a change**
20   **manager and a configuration manager?**
21   A   The configuration aspect in the definition
22   that you proposed, that you paraphrased, would be
23   the piece that talks about its ability to track the
24   changes, what changes took place and the ultimate
25   making or building or even deploying of a software

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1   J. Dueckman
2   from one life cycle state to the next life cycle
3   state.
4   **Q   Why is it important to track those**
5   **changes?**
6   **Why does anyone care about that sort of**
7   **historical data?**
8   A   There are a variety of reasons from
9   auditing to make sure that a developer either
10   knowingly or unknowingly has only made changes to
11   software that have been approved or that have been
12   authorized.
13   In a similar vein, a subsequent developer
14   may need to understand and see what changes took
15   place to the software in order to put a possible
16   problem into context or for that matter additional
17   changes that they may need to make. So that
18   historical auditing type of information is really
19   also crucial for assurance of adherence to
20   regulatory requirements especially with financial
21   systems.
22   **Q   ENDEVOR is designed to run on main frame**
23   **computers, correct?**
24   A   That is correct.
25   **Q   In what operating system does it run in?**

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1   J. Dueckman
2   Q   Am I correct that if you had a customer
3 that was using NATURAL as its programming tool, you
4 wanted to sell that customer your ENDEVOR product,
5 one of the aspects of the package that you could
6 promote to them was that we have an interface that
7 will permit you to enjoy all the benefits of ENDEVOR
8 while using NATURAL?
9   Is that a fair description?
10   A   Yes.
11   MR. McENTEE: Objection to form.
12   MR. KING: This will be 113.
13   (Whereupon, the aforementioned document
14   Bates stamped CA53166 and 67, was marked as
15   Plaintiff's Exhibit 113 for identification as
16   of this date by the reporter.)
17   MR. KING: Off the record.
18   (Whereupon, an off-the-record discussion
19   was held.)
20   MR. KING: Back on the record.
21 BY MR. KING:
22   Q   Mr. Dueckman, we are placing in front of
23 you what we've marked as Plaintiff's Exhibit 113.
24 It's a two-page document bearing Bates numbers
25 CA53166 and 67. You'll see at the top it says

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1   J. Dueckman
2 AllFusion/ENDEVOR change manager. At the bottom it
3 bears a copyright notice indicating that this is a
4 document from 2002.
5   Do you recognize this document?
6   A   (Witness views document.)
7   Yes.
8   Q   Can you tell me what it is?
9   A   It's a document that outlines the
10 different options that was available to the
11 ENDEVOR-based product.
12   Q   Is this a document that was used to train
13 salespeople or was this actually given to customers?
14   A   Likely both.
15   Q   Okay.
16   This document is a summary of some of the
17 options that are available in connection with
18 ENDEVOR?
19   A   Correct.
20   Q   If you turn to the second page of the
21 document, the first entry states AllFusion/ENDEVOR
22 change manager interface for NATURAL.
23   Is that a long way of designating the
24 E/NAT product?
25   A   Yes.

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1   J. Dueckman
2   Q   Okay.
3   The description of what that particular
4 E/NAT product does states AllFusion/ENDEVOR CM
5 interface -- and I assume CM means change manager?
6   A   Correct.
7   Q   -- for NATURAL is an option to
8 AllFusion/ENDEVOR CM than enables management of the
9 software development process for software AG's
10 NATURAL and software AG's Predict. It allows
11 development organizations utilizing NATURAL as their
12 development tool to enjoy all of the life cycle
13 management features of AllFusion/ENDEVOR CM.
14   Is that an accurate description of what
15 E/NAT does? It basically lets a company using
16 NATURAL take advantage of all the features of
17 ENDEVOR as a change manager?
18   A   Yes.
19   Q   So in this document, you were promoting,
20 to the extent that this was given to customers, you
21 were promoting to customers that if you're using
22 NATURAL, we have a great interface that will permit
23 you to use ENDEVOR and take advantage of all of its
24 benefits; is that correct?
25   A   Yes.

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1   J. Dueckman
2   Q   So E/NAT was one of the various attributes
3 of the ENDEVOR product line that you would promote
4 to customers, correct?
5   MR. McENTEE: Objection to "attribute".
6   MR. KING: It's probably a poor choice of
7   word.
8   Q   E/NAT was one of the ENDEVOR options that
9 you would promote to customers for purposes of
10 soliciting their business, correct?
11   A   Assuming they had a need for the NATURAL
12 piece, yes. Not every customer that we approach had
13 NATURAL or that we do approach has NATURAL.
14   Q   For those customers who did have NATURAL,
15 E/NAT would be a critical component, correct?
16   MR. McENTEE: Objection.
17   I'm not sure I know what your client
18   thinks is critical.
19   A   Once the salesperson had qualified that
20 they had NATURAL, we would ensure that customer was
21 aware that we have an interface that runs in a
22 NATURAL environment. So how critical it was for
23 them to address that environment would be their
24 call.
25   Q   Well, put it this way: A customer wanting

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2   UNITED STATES DISTRICT COURT

                  EASTERN DISTRICT OF NEW YORK

3

4   ATLANTIS INFORMATION   ) Docket No.

       TECHNOLOGY, GmbH,   ) 06-CV-3921

5   ) (ADS-WDW)

                  Plaintiff,   )

6   )

                  vs.   )

7   )

       CA, INC.,   )

8   )

                  Defendant.   )

9   ----------------------------)

10

11

12   DEPOSITION OF JOHN R. DUECKMAN

13   New York, New York

14   Thursday, December 17, 2009

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24   Reported by:

       PENNY SHERMAN

25   JOB NO. 26783

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1   Dueckman
2   reflection or a reporting what Endeavor is storing
3   up in the natural environment.
4   Q.   Well, if I understand this correctly,
5   the purpose of Endeavor is that it's a change
6   manager, and it keeps track of these changes that
7   are made in the development world, whatever that
8   world is; is that a fair statement?
9   A.   That's its prime function, yes.
10   Q.   So it would do that for -- regardless of
11   whether you were programming in the natural
12   language or you were programming in Cobol or some
13   other language, correct?
14   A.   Correct.
15   Q.   All right. Now, do you understand that
16   natural is sometimes referred to as a fourth
17   generation language --
18   A.   Yes.
19   Q.   -- do you know what that means?
20   And that there are third-generation
21   programming languages?
22   A.   Yes.
23   Q.   For example, Cobol is a third-generation
24   programming language?
25   A.   Yes.
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1   Dueckman
2   Q.   And does Endeavor require the same kind
3   of interface in order to operate with programming
4   that's being done in these third-generation
5   languages?
6   Do you need to have a special interface
7   for Endeavor to operate and keep track of the
8   changes that are being done in that development
9   environment?
10   A.   You'd have to define what you mean by
11   development environment.
12   Q.   Well, do you have to have a special
13   interface in order for Endeavor to work with other
14   programming languages in order to keep track of
15   changes and perform the Endeavor changes?
16   A.   It depends. It depends on where the
17   developer is doing his work.
18   Q.   Well, can you identify any other special
19   interfaces, like E/Net, that have been developed
20   for Endeavor to enable Endeavor to operate with
21   other, you know, programming language environments?
22   A.   Certainly. One that comes to mind is
23   Roscoe. It's a developer's environment.
24   Q.   And there's a special interface that was
25   created for that?
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1   Dueckman
2   A.   Correct.
3   Q.   Any others?
4   A.   That CA owns?
5   Q.   That either CA owns or licenses --
6   A.   Yeah.
7   Q.   -- from a third party.
8   A.   Another interface would be the change
9   manager, Enterprise Workbench, which is Web based.
10   Q.   But that's not something that was
11   designed to enable the product to work with a
12   particular programming environment, that's just an
13   interface to get you on to the Web; is that
14   correct?
15   A.   No. It provides the capability of
16   interfacing to Endeavor so a developer can download
17   onto their notebook or onto a PC, do their
18   development there, and then upload there. So it
19   provides an interface to disparate platforms.
20   Q.   No, I'm talking about an interface
21   that's necessary in order for it to be able to, you
22   know, interact with a particular programming
23   language, like natural.
24   MR. SCHISSEL: Object to the form.
25   A.   The only other one I can think of
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1   Dueckman
2   possibly would be a third-party vendor that I'm
3   aware of that has their own proprietary form of
4   developing code that is then delivered to Endeavor.
5   That would be Microfocus.
6   Q.   And there's a special interface for
7   that?
8   A.   That they developed, that they maintain,
9   yes.
10   Q.   Now --
11   A.   Another one that I can think of, but I'm
12   not familiar with the details of it, is something
13   called Endeavor DB, which is, again, a CA -- part
14   of a CA product for our -- I think it's our IEMS
15   database product.
16   Q.   That's an interface for this particular
17   database?
18   A.   Correct. But I'm not familiar with the
19   technical details of it.
20   Q.   Do all these interfaces operate through
21   the Endeavor API interface?
22   A.   Which ones did I say?
23   Q.   You mentioned Roscoe.
24   A.   Roscoe, I don't know.
25   Q.   Microfocus?
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Dueckman

1 Dueckman
2 example, 16, I think, where Endeavor's licensed.
3   The group in the United Kingdom was the
4 group that was specifically looking at E/Net when I
5 talked with them personally. And like -- as I
6 indicated, I believe that was in the late-90s. And
7 next correspondence I saw was them looking again, I
8 think it was in the year 2003, but it was
9 correspondence with Steve Cannon that we've
10 referred to earlier, as well.
11   Q.   So, is it your belief, then, that that
12 issue with JPMorgan Chase in the UK is unrelated to
13 this item that we see here in Exhibit 3?
14   A.   I would believe that to be the case,
15 yes.
16   Q.   This is a different segment of JPMorgan
17 Chase?
18   A.   As far as I can determine from this,
19 yes.
20   Q.   Do you know whether or not JPMorgan
21 Chase, in any of its offices, employed E/Net?
22   A.   No, I don't know.
23   Q.   Now, your attorney has said that you
24 don't have specific knowledge of damages, and
25 that's going to be the subject of an expert report.
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1 Dueckman
2 But I would like to ask you what, to your
3 understanding, what damage has CA sustained as a
4 result of these alleged failures by Atlantis to
5 provide these eight enhancements to E/Net?
6   A.   In preparing for this deposition, as
7 well as in the litigation in general, a part of
8 what I've been made aware of was the fact that the
9 development of E/Net Version 3, for all intents and
10 purposes, ceased entirely in the years 2002 and
11 2003.
12   At CA, we were completely unaware that
13 that is, in fact, what had taken place. And
14 arguably, we believed in good faith that it was
15 still taking place.
16   Had we known back then, as certainly as
17 product manager, one of our job functions within
18 the company is to ensure that our brand maintains
19 market value. So in this case, the Endeavor brand
20 carries a very large market value and a very strong
21 following.
22   And secondly, one of the things that as
23 product managers we have to do is make ongoing
24 decisions in terms of our marketplace and how to
25 deliver to their problems in terms of buy, build,
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1 Dueckman
2 acquire or retire.
3   In 2002, 2000 -- 2002, 2003, obviously,
4 we still believed this was still forthcoming. Had
5 we known at that time, we would have immediately
6 launched into a process where we would have
7 re-examined whether or not one, do we want to stay
8 in this marketplace, do we want to stay in the
9 natural environment, do we want to build it
10 ourselves, do we want to acquire someone, or do we
11 want to buy a new solution?
12   Because we were without that information
13 from Atlantis, that effort was never launched. And
14 so in good faith, we just continued on, assuming it
15 was going to be coming as per what we felt was part
16 of the partnership.
17   Q.   Is it your contention that Atlantis was
18 obligated to deliver a Version 3 of its software?
19   A.   Yes.
20   Q.   Based on what?
21   A.   One of the credos, shall we say, in the
22 IT industry is, you produce or die. And at the end
23 of the day, certainly within CA, we have a
24 continuous maintenance cycle where we produce what
25 we call service packs now for our software
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1 Dueckman
2 approximately at least every six months. And then
3 generally we try to introduce a new release to our
4 customers every 18 months to two years.
5   What that allows customers to see is a
6 complete ROI, return on investment, sorry, that
7 they make with us in terms of their maintenance
8 payments and their licensing fees. They
9 understand, then, that those -- that that money is
10 going to a good purpose to allow them to take
11 better advantage of their business.
12   And as we've moved forward with the
13 business of Endeavor and change of configuration
14 management, we expect people or partners to be in
15 with us and also releasing new products -- or I'm
16 sorry, new features and functions to our customers,
17 under -- since they're going under the CA
18 Endeavor-brand umbrella in the first place.
19   That didn't happen for a number of
20 years. And even though there were a variety of
21 requests for updates, we thought work was
22 progressing.
23   Q.   Well, is there anything in the contract
24 that you can point me to between Atlantis and CA
25 that you believe supports the claim that Atlantis
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 1            Dueckman
 2  was obligated to create and deliver a Version 3 of
 3  its software?
 4        MR. SCHISSEL:  Other than what he's
 5  already testified to?
 6        MR. JENSEN:  If he can -- if he already
 7  testified to it, he can refer to that
 8  testimony.
 9     Q.   But what is it that you believe supports
10  that claim?
11     A.   I believe, in the clause where it says
12  they will support the CA software, that implies
13  more than just technically supporting.  It also
14  implies, to a product manager, supporting the
15  business, the strategy, the direction that the
16  software is going in.
17     Q.   Did CA -- withdrawn.
18        Until the termination of the
19  relationship in December of 2008, did CA continue
20  to sell or license E/Net to its customers?
21     A.   No.  Per the terms of our agreement, our
22  obligation to sell terminated in December 2007, and
23  for the subsequent year, we were obligated to
24  provide level 1 support.
25     Q.   Point taken.
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 1            Dueckman
 2        From the cessation of its obligation to
 3  sell, in its termination in December of 2007 up
 4  until that date, did CA continue to sell E/Net to
 5  its customers?
 6     A.   Yes, absolutely.
 7     Q.   And did CA continue to support E/Net for
 8  its customers?
 9     A.   Yes.
10     Q.   And even at the point at which CA
11  announced that it had a replacement product for
12  E/Net, did it continue at that stage to offer E/Net
13  as a product?
14     A.   Yes.
15     Q.   Why didn't CA simply cancel the
16  agreement at that point in time?  Do you know?
17     A.   I would say timing.
18     Q.   Did CA believe that E/Net, up until the
19  termination of its agreement with Atlantis,
20  December of '07, was a product that was suitable to
21  be used by its customers who needed to, you know,
22  operate Endeavor with a natural and predict
23  environment?
24        MR. SCHISSEL:  Object to the form.
25     A.   We ensured, during that time, that
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 1            Dueckman
 2  customers were made available -- were made aware of
 3  both offerings, so both E/Net, as well as the new
 4  product that we also had available.  We were very
 5  diligent in ensuring that customers had an
 6  opportunity to choose between the two.
 7     Q.   Do you know when CA decided that it
 8  would build a replacement product or obtain a
 9  replacement product?
10     A.   Yes.
11     Q.   When was that?
12     A.   I believe it was end of 2005, beginning
13  of 2006.
14     Q.   And do you know what the reasons were
15  for CA to obtain a replacement product at that
16  time?
17     A.   No.  I was not -- I was not privy to the
18  specific discussions around why the decision was
19  actually made.  I was instructed this was the case.
20     Q.   Do you know whether or not it had
21  anything to do with the dispute between Atlantis
22  and CA regarding the amount of royalties that were
23  due from the licensing of E/Net?
24     A.   No.
25     Q.   Were you aware of a dispute that arose
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 1            Dueckman
 2  between the parties in 2005 concerning the
 3  royalties that were payable?
 4     A.   I had heard of it.
 5     Q.   But you have no knowledge of whether or
 6  not that related in any way to CA's decision to
 7  begin looking for a replacement product?
 8     A.   No.
 9     Q.   If I can go back a moment, we've talked
10  about a JPMorgan Chase situation where you say you
11  lost a sale of E/Net because of the failure to
12  provide either a new version or some enhancements
13  to the existing versions of E/Net, correct?
14     A.   They chose not to pursue -- purchase
15  E/Net, that's correct.
16     Q.   All right.  And was CA damaged as a
17  result of that?
18        MR. SCHISSEL:  Object to the form.
19     A.   CA didn't realize the potential revenue.
20     Q.   From that sale?
21     A.   Correct.
22     Q.   Are you aware of other damage that CA
23  had?
24     A.   Personally, no.
25        MR. JENSEN:  Just give me a second.  I
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